

On April 25, 1985 appellant then a 35-year-old nursing assistant, filed a traumatic injury claim alleging that on April 20, 1985 she injured her right shoulder, neck and arm when lifting a patient into a wheel chair. On April 29, 1985 appellant filed another traumatic injury claim

alleging that she was assisting a patient onto an x-ray table and the patient rolled onto her injuring her right arm, neck and shoulder.¹ Appellant's claim was accepted for right shoulder, back and neck strain and was expanded to include a partial right shoulder rotator cuff tear. She was paid appropriate compensation for all periods of disability. Appellant stopped work on April 30, 1985 and returned to restricted duty on June 3, 1985.

Appellant came under the treatment of Dr. Curtis W. Smith, a Board-certified orthopedist, who noted treating appellant from August 9, 1985 to February 15, 1988. He noted a history of appellant's work-related injury and diagnosed a right shoulder, back and neck strain and recommended physical therapy. Dr. Smith advised that appellant could return to duty subject to lifting restrictions.

In the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners. Throughout this development, appellant remained in receipt of appropriate benefits.

Thereafter, appellant submitted reports from Dr. Smith dated April 16 and May 28, 2002 who noted appellant's continued treatment of her industrial injury to her lower back. He noted symptoms of increasing lower back pain with radiation of pain down both legs with giving way. Dr. Smith diagnosed a lumbar strain and opined that appellant's present condition was the direct result of her work-related injury of April 1985. Also submitted were reports from Dr. Susan E. Stephens, a Board-certified internist, dated June 2 to July 22, 2002, who noted a history of appellant's work injury. She diagnosed lumbosacral strain and lumbar canal stenosis and opined that these conditions were related to the work injuries of 1985.

On July 16, 2002 the Office referred appellant for a second opinion to Dr. Alan H. Wilde, a Board-certified orthopedist to determine whether appellant had any residuals of her work-related injuries of right shoulder, back and neck strain. The Office also requested Dr. Wilde to address whether appellant's diagnosed condition of lumbar canal stenosis was causally related to her accepted work injury. The Office provided Dr. Wilde with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated August 16, 2002, Dr. Wilde indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's condition. Dr. Wilde diagnosed torn rotator cuff of the right shoulder, osteoarthritis of the cervical spine and low back with spinal stenosis. He opined that appellant did have residuals of the right shoulder strain; however, noted that the neck and back strain were resolved. Dr. Wilde noted that a magnetic resonance imaging (MRI) scan revealed lumbar canal stenosis; however, opined that her work injury of April 20, 1985 did not contribute to this condition, rather it is a degenerative condition and not the result of an injury.

The Office determined that a conflict of medical opinion had been established between Dr. Stephens, appellant's treating physician, who indicated appellant sustained residuals of her work-related lumbosacral strain and lumbar canal stenosis and Dr. Wilde, an Office referral physician, who determined that appellant did not have residuals of her accepted neck and back

¹ The record reveals that these claims were consolidated.

strain and opined that the lumbar canal stenosis was a degenerative condition and not work related.

To resolve the conflict the Office referred appellant to a referee physician, Dr. Ralph J. Kovach, a Board-certified orthopedic surgeon, who indicated, in a report dated January 30, 2003, that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. He noted that upon examination appellant's right shoulder revealed no evidence of strain but findings which could be consistent with a partial tear of the rotator cuff. The examination of the neck was normal; however, the back revealed generalized restriction of movement secondary to significant hyperlordosis and marked degenerative changes. Dr. Kovach opined that appellant did have residual of the right shoulder secondary to the partial tear of the rotator cuff which presented moderate restriction of movement. He further noted that the diagnosed condition of lumbar canal stenosis was the result of degenerative condition and was not related to the strain which she sustained on the dates of injury. Dr. Kovach advised that to a reasonable degree of medical certainty the acute strains appellant sustained in 1985 were not sufficient to cause the degenerative changes which are now present or the condition of lumbar canal stenosis but were the result of aging and excess weight.

On February 14, 2003 the Office requested a supplemental report from Dr. Kovach, specifically requesting that he address whether appellant's back and neck strain had resolved. In a report dated February 20, 2003, Dr. Kovach advised that upon examination of appellant there were no objective medical evidence of neck and back strain and he therefore opined that the back and neck strain were resolved.

Appellant submitted an x-ray of the back dated April 18, 2002 which revealed degenerative disc disease of L3-4. Also submitted were reports from Dr. Stephens dated September 19 and October 17, 2002 which noted a history of appellant's work-related injury of 1985 and noted findings upon physical examination of decreased range of motion, tenderness, and positive straight leg raises. She diagnosed lumbosacral strain and aggravation of preexisting condition of lumbar canal stenosis and recommended physical therapy and epidural blocks.

On March 14, 2003 the Office issued a notice of proposed termination of medical benefits for appellant's back and neck strain on the grounds that Dr. Kovach's reports dated January 30 and February 20, 2003 established no residuals of the work-related neck and back strain injuries. The Office specifically noted that appellant's claim would be expanded to include a right rotator cuff tear and indicated that appellant continued to have residuals of the right rotator cuff tear injury and that medical benefits would be continued for this work-related injury. The Office further noted that the claim would not be expanded to include the claim of lumbar canal stenosis as it was determined not to be work related.

Appellant expressed disagreement with the proposed termination of compensation and submitted additional medical reports from Dr. Stephens dated February 20 and March 20, 2003 which noted appellant's continued complaints of low back pain with radiculopathy. She noted positive physical findings of decreased range of motion, tenderness and positive straight leg raises. Dr. Stephens diagnosed lumbosacral strain and aggravation of preexisting condition of lumbar canal stenosis.

By decision dated July 17, 2003, the Office terminated appellant's medical benefits for her neck and back strain effective the same day on the grounds that the weight of the medical evidence established that appellant had no continuing residuals of the work-related neck and back strain injuries. The Office noted that appellant's claim would be expanded to include a right rotator cuff tear and indicated that appellant continued to have residuals of the right rotator cuff tear injury and that medical benefits would be continued for this work-related injury. The Office further noted that the claim would not be expanded to include the claim of lumbar canal stenosis as it was not determined to be work related.

Appellant disagreed with the Office's decision through her attorney requested an oral hearing before an Office hearing representative. The hearing was held on August 20, 2004. Appellant submitted reports from Dr. Stephens dated June 26 and December 18, 2003 which noted appellant's continued complaints of low back pain with radiculopathy. She noted positive physical findings of decreased range of motion, tenderness and positive straight leg raises. Dr. Stephens diagnosed lumbosacral strain. In her report dated May 14, 2004, Dr. Stephens diagnosed torn rotator cuff of the right shoulder and recommended an MRI scan.

In a decision dated May 26, 2004, the hearing representative affirmed the Office decision dated July 17, 2003. The Office hearing representative indicated that Dr. Kovach's opinion constituted the weight of the medical evidence.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

ANALYSIS -- ISSUE 1

In this case, the Office accepted appellant's claim for right shoulder, back and neck strain, and a partial right shoulder rotator cuff tear. The Office found that a conflict of medical opinion existed between the second opinion physician, Dr. Wilde, a Board-certified orthopedic surgeon, who opined that appellant's neck and back strains were resolved and determined that the diagnosed condition of lumbar canal stenosis was a degenerative condition and not work related, and the attending physician, Dr. Stephens, a Board-certified orthopedist, who opined that appellant still had residuals of the lumbar strain and opined that the diagnosed condition of

² *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

lumbar canal stenosis was related to the 1985 accepted injury. As there was a conflict in the medical opinion evidence, the Office properly referred appellant for an impartial medical examination by Dr. Kovach, a Board-certified orthopedic surgeon.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵

In his January 30 and February 20, 2003 reports, Dr. Kovach reviewed the entire case record and statement of accepted facts. He examined appellant thoroughly and related his clinical findings. Dr. Kovach advised that upon examination of appellant there were no objective medical evidence of neck and back strain when appellant was examined and opined that the back and neck strain had resolved. He opined that appellant did have residuals of the right shoulder injury secondary to the partial tear of the rotator cuff which presented moderate restriction of movement. Dr. Kovach opined that the diagnosed condition of lumbar canal stenosis was the result of degenerative condition and was not related to the strain which appellant sustained on the dates of injury. He advised that to a reasonable degree of medical certainty the acute strains appellant sustained in 1985 were not sufficient to cause the degenerative changes which are now present or the condition of lumbar canal stenosis but were the result of aging and excess weight.

The Board finds that, under the circumstances of this case, the opinion of Dr. Kovach is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related back and neck strain has ceased. He had reviewed the entire case record and statement of accepted facts and had examined appellant. Dr. Kovach additionally provided well-reasoned rationale as to why appellant's current medical condition of lumbar canal stenosis was not causally related to her accepted work injuries. The Board finds that his opinion represents the weight of the medical evidence.

After issuance of the pretermination notice, appellant submitted reports dated February 20 and March 20, 2003 from Dr. Stephens who indicated appellant's continued complaints of low back pain with radiculopathy and diagnosed lumbosacral strain and aggravation of preexisting condition of lumbar canal stenosis. While appellant's treating physician stated that appellant's current conditions were causally related to her accepted work injuries, the physician did not explain or provide medical rationale supporting the conclusion. As her reports were merely conclusory, they are of diminished probative value and insufficient to show how appellant's current conditions were caused, precipitated, accelerated or aggravated by the accepted work injuries.⁶ Additionally, Dr. Stephens' reports are similar to her prior reports and are insufficient to overcome that of Dr. Kovach or to create a new medical conflict as Dr. Stephens was on one side of the conflict that Dr. Kovach resolved.⁷

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *See Ricky S. Storms*, 52 ECAB 349 (2001).

⁷ *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Stephens' reports do not contain new findings or rationale upon which a new conflict might be based.

Dr. Kovach's opinion represents the weight of the medical evidence establishing that appellant's back and neck strain are resolved and that the condition of lumbar canal stenosis is not a residual from her accepted work injuries. Therefore, the Board finds that the Office properly terminated appellant's benefits with respect to the back and neck strain effective July 17, 2003.

LEGAL PRECEDENT -- ISSUE 2

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability causally related to her accepted employment injury.⁸ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her back and neck strain and lumbar canal stenosis causally related to her accepted employment injuries on or after July 17, 2003. Appellant submitted reports from Dr. Stephens dated June 26 and December 18, 2003 which noted appellant's continued complaints of low back pain with radiculopathy. She noted positive physical findings upon physical examination and diagnosed lumbosacral strain. However, her report did not include a rationalized opinion regarding the causal relationship between appellant's back condition and her accepted work-related injury in 1985.¹⁰

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current neck, back and lumbar canal stenosis condition and her accepted work-related injuries of April 20 and 29, 1985.¹¹ The Board has found that vague and unrationalized medical opinion on causal relationship have little

⁸ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

⁹ *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

¹⁰ *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹¹ *Id.*

probative value. Therefore, the reports from Dr. Stephens are insufficient to overcome that of Dr. Kovach or to create a new medical conflict.¹²

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's benefits for her neck and back strain on July 17, 2003. The Board further finds that appellant failed to establish that she has a continuing condition or disability causally related to her employment injuries of her neck and back strain on or after July 17, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 26, 2004 is affirmed.

Issued: January 28, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹² See *Howard Y. Miyashiro*, *supra* note 7; *Dorothy Sidwell*, *supra* note 7. The Board notes that Dr. Stephens reports do not contain new findings or rationale upon which a new conflict might be based.